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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,
11
12 Plaintiff,
13 vs.
14 DYSON, INC.,
15 Defendant.

CASE NO.: RG16807228

[PROPOSED] CONSENT JUDGMENT

Judge: Frank Roesch

Dept.: 24

Hearing Date: May 24, 2016

Hearing Time: 3:45 PM

Reservation #: R-1726515

1 **1. Introduction**

2 1.1 On June 17, 2015, Anthony Ferreiro (“Ferreiro”) served Dyson, Inc. (“Dyson”),
3 Sears Holdings Management Corporation, Sears Holdings, Inc., Sears Corporation, Sears Brands
4 Management Corporation, Sears Holdings Corporation (collectively, the “Noticed Parties”), and
5 various public enforcement agencies with a document entitled “Notice of Violation of California
6 Health & Safety Code § 25249.6, *et seq.*” (the “Notice”). The Notice provided the Noticed
7 Parties and such others, including public enforcers, with notice that alleged that the Noticed
8 Parties were in violation of California Health & Safety Code § 25249.6 (“Proposition 65”), for
9 failing to warn consumers and customers that certain plastic vacuum hoses included in Dyson
10 products, included but not limited to the Dyson Cordless Vacuum Tool Kits, UPC No.
11 879957006003 (the “Product”) exposed California consumers to the chemicals Di-isodecyl
12 phthalate (DIDP) and Diisononyl phthalate (DiNP). No public enforcer has diligently prosecuted
13 the allegations set forth in the Notice.

14 1.2 On March 11, 2016, Ferreiro filed a Complaint for Civil Penalties and Injunctive
15 Relief (“Complaint”) in Alameda County Superior Court, Case No. RG16807228 against Dyson
16 alleging violations of Proposition 65.

17 1.3 Dyson is a corporation that employs more than ten persons under California Health
18 and Safety Code §25249.6 and offered the Product for sale within the State of California.

19 1.4 Ferreiro’s Complaint alleges, among other things, that Dyson sold the Product in
20 California and/or to California citizens, that the Product contains DIDP and DiNP, and that the
21 resulting exposure violated provisions of Proposition 65, by knowingly and intentionally
22 exposing persons to chemicals known to the State of California to both cancer, birth defects, and
23 other reproductive harm, without first providing a clear and reasonable warning to such
24 individuals.

25 1.5 For purposes of this Consent Judgment only, the parties stipulate that this Court
26 has jurisdiction over the allegations of violations contained in the Complaint and personal
27 jurisdiction over Dyson as to the acts alleged in the Complaint, that venue is proper in the County
28 of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a resolution of

1 the allegations contained in the Complaint.

2 1.6 The parties enter into this Consent Judgment pursuant to a full settlement of
3 disputed claims between the parties, including the Noticed Parties, as alleged in the Complaint for
4 the purpose of avoiding prolonged litigation. By execution of this Consent Judgment, Dyson and
5 the Noticed Parties does not admit any violation of Proposition 65 and specifically denies that it
6 has committed any such violation. Nothing in this Consent Judgment shall be construed as an
7 admission by Dyson and the Noticed Parties of any fact, issue of law or violation of law, nor shall
8 compliance with the Consent Judgment constitute or be construed as an admission by Dyson and
9 the Noticed Parties of any fact, issue of law, or violation of law. Nothing in this Consent
10 Judgment shall prejudice, waive, or impair any right, remedy or defense that Dyson and the
11 Noticed Parties may have in any other future legal proceeding. However, this paragraph shall not
12 diminish or otherwise affect the obligations, responsibilities and duties of Dyson and the Noticed
13 Parties under this Consent Judgment.

14 1.7 For purposes of this Consent Judgment, the term "Effective Date" shall mean the
15 date that the Consent Judgment is entered by the Court.

16 **2. Injunctive Relief**

17 2.1 Commencing on the Effective Date, and continuing thereafter, Dyson shall only
18 ship, sell, or offer for sale in California, Reformulated Product pursuant to Section 2.2 or Product
19 that is labeled with a clear and reasonable warning pursuant to Section 2.3. Dyson and its
20 downstream retailers shall have no obligation to label Product that entered the stream of
21 commerce prior to the Effective Date. For purposes of this Settlement Agreement, a
22 "Reformulated Product" is a Product that is in compliance with the standard set forth below in
23 section 2.2.

24 2.2 "Reformulated Product" shall mean Product that contains less than or equal to
25 1,000 parts per million ("ppm") of each of DiNP and DIDP when analyzed pursuant to CPSC-
26 CH-C1001-09.3 Standard Operating Procedure for Determination of Phthalates method.

27 2.3 Commencing on the Effective Date, Dyson shall, for all Product it sells or
28 distributes and which is intended for sale in California and which that is not a Reformulated

1 Product, provide clear and reasonable warnings as set forth in subsections 2.3(a) and (b) below.
2 The warning shall be prominently placed with such conspicuousness as compared with other
3 words, statements, designs, or devices as to render it likely to be read and understood by an
4 ordinary individual under customary conditions before purchase or use. Each warning shall be
5 provided in a manner such that the consumer or user understands to which specific Product the
6 warning applies, so as to minimize the risk of consumer confusion.

7 **(a) Retail Store Sales**

8 **(i) Product Labeling.** Dyson shall affix a warning to the packaging,
9 labeling or directly on each Product sold in retail outlets in California by Dyson or
10 any person selling the Product that states:

11 **[PROPOSITION 65] WARNING:**

12 This product contains chemicals known to the State of California to cause cancer,
13 birth defects or other reproductive harm.

14 The bracketed text may, but is not required to, be used.

15 **(ii) Point of Sale Warnings.** Alternatively, Dyson may
16 provide warning signs in the form below to its customers in California with
17 instructions to post the warnings in close proximity to the point of display
18 of the Product. Such instruction sent to Dyson customers shall be sent by
19 certified mail, return receipt requested.

20 **[PROPOSITION 65] WARNING:**

21 This product contains chemicals known to the State of California to cause cancer,
22 birth defects or other reproductive harm.

23 The bracketed text may, but is not required to, be used.

24 **(b) Mail Order Catalog Warning.** In the event that Dyson directly sells

25 Product via mail order catalog directly to consumers located in California after the Effective Date
26 that is not a Reformulated Product, Dyson shall provide a warning for such Product sold via mail
27 order catalog to such California residents. A warning that is given in a mail order catalog shall be
28 in the same type size or larger than the Product description text within the catalog. The following
warning shall be provided on the same page and in the same location as the display and/or

1 description of the Product:

2 **[PROPOSITION 65] WARNING:**

3 This product contains chemicals known to the State of California to cause cancer,
4 birth defects or other reproductive harm.

5 Where it is impracticable to provide the warning on the same page and in the same location as the
6 display and/or description of the Product, Dyson may utilize a designated symbol to cross
7 reference the applicable warning and shall define the term "designated symbol" with the
8 following language on the inside of the front cover of the catalog or on the same page as any
9 order form for the Product:

10 **[PROPOSITION 65] WARNING:** Certain products identified with this symbol
11 ▼ and offered for sale in this catalog contain chemicals known to the State of
12 California to cause cancer, birth defects or other reproductive harm.

13 The designated symbol must appear on the same page and in close proximity to the
14 display and/or description of the Product. On each page where the designated symbol appears,
15 Dyson must provide a header or footer directing the consumer to the warning language and
16 definition of the designated symbol.

17 **(c) Internet Sales Warning.** In the event that Dyson directly sells Product
18 via the internet directly to consumers located in California after the Effective Date that is not a
19 Reformulated Product, Dyson shall provide a warning for such Product sold via the internet to
20 such California residents. A warning that is given on the internet shall be in the same type size or
21 larger than the Product description text and shall be given in conjunction with the direct sale of
22 the Product. The warning shall appear either: (a) on the same web page on which the Product is
23 displayed; (b) on the same web page as the order form for the Product; (c) on the same page as
24 the price for the Product; or (d) on one or more web pages displayed to a purchaser during the
25 checkout process. The following warning shall be provided:

26 **[PROPOSITION 65] WARNING:**

27 This product contains chemicals known to the State of California to cause cancer, birth
28 defects or other reproductive harm

2.4 The warning requirements set forth in Section 2.3 shall not apply to any

1 Reformulated Product.

2 2.5 The warning requirements set forth in Section 2.3 are intended to comply with the
3 warning requirements of California Health and Safety Code § 25249 *et seq.* as it is currently
4 drafted. The warning requirements set forth in Section 2.3 may be altered by Dyson without any
5 prior notice or approval to comply with any future amendments, revisions, or modifications of the
6 warning label requirements of Health and Safety Code § 25249 *et seq.*

7 **3. Entry of Consent Judgment**

8 3.1 The parties hereby request that the Court promptly enter this Consent Judgment.
9 Upon entry of this Consent Judgment, Ferreiro and Dyson waive their respective rights to a
10 hearing or trial on the allegations of the Ferreiro Complaint and Notice.

11 3.2 In the event that the Attorney General objects or otherwise comments on one or
12 more provisions of this Consent Judgment, Ferreiro and Dyson agree to work in good faith to
13 resolve such concerns or objections.

14 **4. Matters Covered By This Consent Judgment**

15 4.1 This Consent Judgment is a final and binding resolution between Plaintiff Ferreiro,
16 acting on his own behalf, and on behalf of the public and in the public interest, Defendant Dyson,
17 and the Noticed Parties, and shall have preclusive effect such that no other person or entity,
18 whether purporting to act in his, her, or its interests or the public interest shall be permitted to
19 pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in
20 the Complaint, or that could have been brought pursuant to the Notice. As to Plaintiff Ferreiro for
21 and in his individual capacity only, this Consent Judgment shall have preclusive effect such that
22 he shall not be permitted to pursue and/or take any action with respect to any other statutory or
23 common law claim, to the fullest extent that any of the foregoing were or could have been
24 asserted by him against Dyson or the Noticed Parties, including any and all downstream retailers
25 of the Product including but not limited to the Noticed Parties, based on their exposure of persons
26 to DIDP and DiNP in the Product, or their failure to provide a clear and reasonable warning of
27 exposure to such individuals or, as to alleged exposures to DIDP and DiNP in the Product, any
28 other claim based on whole or in part on the facts alleged in the Complaint and the Notice,

1 whether based on actions committed by Dyson, the Noticed Parties, or their downstream retailers
2 of the Product including but not limited to Sears. Compliance with the terms with this Consent
3 Judgment shall be deemed to be compliance by Dyson, and the Noticed Parties with the warning
4 requirement of Proposition 65 for exposures to DIDP and DiNP from the Products.

5 4.2 As to alleged exposures to DIDP and DiNP in the Product, Ferreiro acting in his
6 individual capacity waives all rights to institute any form of legal action, and releases all claims
7 against Dyson (including its parents, subsidiaries or affiliates, and assigns of any of them, who
8 may use, maintain, distribute or sell the Product), and the Noticed Parties (including their parents,
9 subsidiaries or affiliates, and assigns of any of them, who may use, maintain, distribute or sell the
10 Product) whether under Proposition 65 or otherwise, arising out of or resulting from, or related
11 directly or indirectly to, in whole or in part, the Product, including but not limited to any exposure
12 to, or failure to warn with respect to, the DIDP and DiNP in the Product (referred to collectively
13 in this Section as the "Claims"). In furtherance of the foregoing, as to alleged exposures to DIDP
14 and DiNP in the Product, Ferreiro waives any and all rights and benefits which he now has, or in
15 the future may have, conferred upon him with respect to the Claims by virtue of the provisions of
16 § 1542 of the California Civil Code, which provides as follows:

17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
18 CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS FAVOR AT
19 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
20 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
21 DEBTOR.

22 Ferreiro understands and acknowledges that the significance and consequence of this waiver of
23 California Civil Code § 1542 is that even if Ferreiro suffers future damages arising out of or
24 resulting from, or related directly or indirectly to, in whole or in part, the Product, including but
25 not limited to any exposure to, or failure to warn with respect to exposure to DIDP and DiNP in
26 the Product, Ferreiro will not be able to make any claim for those damages against Dyson or the
27 Noticed Parties.

28 **5. Enforcement of Judgment**

1 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
2 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
3 Alameda County, giving the notice required by law, enforce the terms and conditions contained
4 herein. In any proceeding brought by either party to enforce this Consent Judgment, such party
5 may seek whatever fines, costs, penalties or remedies as may be provided by law for any violation
6 of Proposition 65 or this Consent Judgment.

7 **6. Modification of Judgment**

8 6.1 This Consent Judgment may be modified only by written agreement of the parties
9 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as
10 provided by law and upon an entry of a modified Consent Judgment by the Court.

11 6.2 Should any court enter final judgment in a case brought by Ferreiro or the People
12 involving the Product that sets forth standards defining when Proposition 65 warnings will or will
13 not be required (“Alternative Standards”), or if the California Attorney General’s office otherwise
14 provides written endorsement (i.e., a writing that is circulated by the Attorney General that is not
15 intended for the purpose of soliciting further input or comments) of Alternative Standards
16 applicable to the products that are of the same general type and function as the Product and
17 constructed from the same materials, Dyson and the Noticed Parties shall be entitled to seek a
18 modification of this Consent Judgment on sixty (60) days’ notice to Ferreiro so as to be able to
19 utilize and rely on such Alternative Standards in lieu of those set forth in Section 7 of this
20 Consent Judgment. Ferreiro shall not unreasonably contest any proposed application to effectuate
21 such a modification provided that the Product for which such a modification is sought are of the
22 same general type and function as those to which the Alternative Standards apply.

23 **7. Settlement Payment**

24 7.1 In settlement of all the claims referred to in this Consent Judgment, and without
25 any admission of liability therefore, Dyson shall make the following monetary payments:

26 7.1.1 Dyson shall pay a total of \$2,500.00 in civil penalties in accordance with
27 this Section. The civil penalty payment will be allocated in accordance with California Health &
28 Safety Code §§ 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of

1 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the civil
2 penalty remitted to Ferreiro.

3 7.1.2 Within seven (7) business days of the Effective Date, Dyson shall issue two
4 separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$1,875.00;
5 and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$625.00. Payment owed
6 to Ferreiro pursuant to this Section shall be delivered to the following payment address:

7 Evan J. Smith, Esquire
8 Brodsky & Smith, LLC
9 Two Bala Plaza, Suite 510
10 Bala Cynwyd, PA 19004

11 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
12 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

13 For United States Postal Service Delivery:

14 Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 P.O. Box 4010
18 Sacramento, CA 95812-4010

19 For Non-United States Postal Service Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 1001 I Street
24 Sacramento, CA 95814

25 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address
26 set forth above as proof of payment to OEHHA.

27 7.1.3 In addition to the payment above, Dyson shall pay \$30,000.00 to Brodsky
28 & Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiff Ferreiro's attorneys'
fees and costs, including any investigation and laboratory costs or expert fees, incurred in the
course of bringing the Ferreiro action, and in enforcing Proposition 65, including without
limitation, preparation of the Notice letter and discussions with the office of the Attorney
General. Payment shall be made within seven (7) business days of the Effective Date and sent to
the address for Brodsky & Smith set forth in section 7.1.2, above.

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8. Notices

8.1 Any and all notices between the parties provided for or permitted under this Agreement, or by law, shall be in writing and personally delivered or sent by: (i) first-class (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any party by the other party to the following addresses:

For Dyson:

Thomas S. Lee
BRYAN CAVE
560 Mission Street, 25th Floor
San Francisco, CA
T: 415-675-3447

For Ferreiro:

Evan J. Smith
BRODSKY & SMITH, LLC
9595 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212
T: 877.354.2590

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

9. Authority to Stipulate

9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally to bind that party.

10. Counterparts

10.1 This Stipulation may be signed in counterparts and shall be binding upon the parties hereto as if all said parties executed the original hereof.

11. Retention of Jurisdiction

11.1 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

12. Service on the Attorney General

12.1 Ferreiro shall serve a copy of this Consent Judgment, signed by both parties, on the California Attorney General on behalf of the parties so that the Attorney general may review this

1 California Attorney General on behalf of the parties so that the Attorney general may review this
2 Consent Judgment prior to its submittal to the Court for Approval. No sooner than forty-five (45)
3 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
4 and in the absence of any written objection by the Attorney General to the terms of this Consent
5 Judgment, the parties may then submit it to the Court for Approval.

6 **13. Entire Agreement**

7 13.1 This Consent Judgment contains the sole and entire agreement and understanding
8 of the parties with respect to the entire subject matter hereof, and any and all discussions,
9 negotiations, commitment and understandings related thereto. No representations, oral or
10 otherwise, express or implied, other than those contained herein have been made by any party
11 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
12 to exist or to bind any of the parties.

13 **14. Governing Law and Construction**

14 14.1 The validity, construction and performance of this Consent Judgment shall be
15 governed by the laws of the State of California, without reference to any conflicts of law
16 provisions of California law.

17 **15. Court Approval**

18 15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
19 effect, and cannot be used in any proceeding for any purpose.

20 **IT IS SO STIPULATED:**

21
22 Dated: April 5, 2016

22 Dated: 4/4/2016

23
24 By: Anthony Ferreira
25 Anthony Ferreira

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24 By: [Signature]
25 Dyson, Inc.

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27 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

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Dated: _____

Judge of Superior Court